

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1283

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Docket No. 77-1283

Plaintiff-Appellee,

-against-

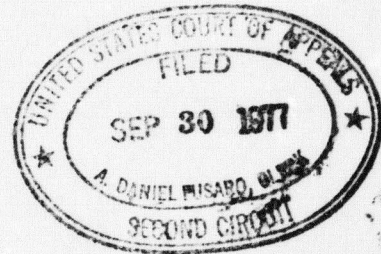
DONALD NIANG, et al.,

Defendant-Appellant.

-----X

B
pro S

APPENDIX



KENNETH W. SALAWAY
SALAWAY & SCHREIBER
Attorney for defendant-appellant
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Kew Gardens, N.Y. 11415
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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ALBERT DUKE,
ALBERT WILLIAMS, a/k/a "Sonny",
a/k/a "J. R.", and
DONALD NIANG, a/k/a "Donald",

Defendants.

INDICTMENT

S 76 Cr. 916

COUNT ONE

The Grand Jury charges:

1. From on or about the first day of March, 1976, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ALBERT DUKE, ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J. R.", and DONALD NIANG, a/k/a "Donald", the defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree together and with each other, Ted Adams, Pruitt Williams, Erma Jean Adams, a/k/a "Teddy's Sister", Rodney Crosby, August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy" and Freddie Pettaway, who are named herein as co-conspirators but not defendants and with other persons to the Grand Jury known and unknown, to commit crimes against the United States of America, to wit, to violate Sections 656, 2314, and 2315 of Title 18, United States Code.

2. It was part of said conspiracy that co-conspirator Rodney Crosby, then an employee of the Toledo Trust Company, Toledo, Ohio, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, and the defendants and other co-conspirators, would embezzle, abstract, purloin,

and willfully misapply moneys, funds, assets, and securities intrusted to the care and custody of said bank and to the care and custody of co-conspirator Rodney Crosby, to wit, stock certificates and bond coupons of an approximate market value of \$500,000.

3. It was further a part of said conspiracy that the defendants and co-conspirators would transport, and cause to be transported, in interstate commerce securities of the value of more than \$5000, to wit, the said stock certificates and bond coupons, of an approximate value of \$500,000, knowing the same to have been stolen, converted, and taken by fraud.

4. It was further a part of said conspiracy that the defendants and co-conspirators would receive, conceal, store, barter, sell, and dispose of securities of a value of more than \$5000, to wit, the said stock certificates and bond coupons of an approximate market value of \$500,000, which securities were moving as, were part of, and constituted interstate commerce knowing the said stock certificates and bond coupons to have been stolen, unlawfully converted, and taken.

5. Among the means whereby the defendants and co-conspirators would and did carry out the said conspiracy were the following:

(a) Co-conspirator Rodney Crosby, as an employee working in the mail room of the Toledo Trust Company, would and did take envelopes containing stock certificates and bond coupons, prepared for mailing but prior to their being registered for mailing, from the Toledo Trust Company and deliver them to co-conspirators Ted Adams and Erma Jean Adams, a/k/a "Teddy's Sister";

(b) Co-conspirators Ted Adams, August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy", and Pruitt Williams would and did transport the said stock certificates and bond coupons in order to sell them from Toledo, Ohio to New York, New York;

-2700

(c) The defendants ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J. R." and DONALD NIANG, a/k/a "Donald", and co-conspirator Freddie Pettaway would and did make arrangements for the delivery of the said stock certificates and bond coupons to New York, New York and the defendant ALBERT DUKE;

(d) The defendant ALBERT DUKE would and did transfer the said stock certificates to another person and arranged to divide the profits from the sale of the stock.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

- ✓ 1. In early April, 1976 co-conspirators Rodney Crosby and August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy", had a conversation in the vicinity of Rockcliff Road, Atlanta, Georgia.
- ✓ 2. In early May, 1976 co-conspirators Rodney Crosby, August Barbine, Jr., and Ted Adams met in the vicinity of 669 Pinewood Street, Toledo, Ohio.
- ✓ 3. On or about May 5, 1976 co-conspirator Rodney Crosby took an envelope containing stock certificates of the Potomac Electric Power Company and the Houston Natural Gas Corporation from the mailroom of the Toledo Trust Company and delivered it to co-conspirator Ted Adams standing near a bus stop on Summit Street, Toledo, Ohio.
- ✓ 4. On or about May 5, 1976 co-conspirator Ted Adams in Toledo, Ohio made a telephone call to co-conspirator Freddie Pettaway in New York, New York.

5. On or about May 6, 1976 the defendant DONALD NIANG, a/k/a "Donald" in New York, New York made a telephone call to co-conspirators Ted Adams and August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy" in Toledo, Ohio.

6. On or about May 10, 1976 the defendant DONALD NIANG, a/k/a "Donald" visited the office of Raul Ortiz Travel, 622 East 138th Street, Bronx, New York.

7. On or about May 12, 1976 co-conspirators Ted Adams and August Barbine, Jr., a/k/a "James Johns," a/k/a "Jimmy" flew on United Air Lines flight 572 from Toledo, Ohio to Newark, New Jersey carrying stock certificates of the Potomac Electric Power Company and the Houston Natural Gas Corporation.

8. On or about May 12, 1976 co-conspirators Ted Adams and August Barbine, Jr., a/k/a "John Johns", a/k/a "Jimmy" and defendants ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J. R." and DONALD NIANG a/k/a "Donald" drove to a store in the vicinity of Lenox Avenue, New York, New York.

9. In mid-May, 1976 co-conspirator Rodney Crosby took a quantity of stock certificates from the Toledo Trust Company and delivered them to co-conspirator Ted Adams on Summit Street, Toledo, Ohio.

10. In mid-May, 1976 the defendants ALBERT WILLIAMS a/k/a "Sonny", a/k/a "J. R." and DONALD NIANG, a/k/a "Donald" delivered quantities of stock certificates and bond coupons to the defendant ALBERT DUKE in New York, New York.

11. In or about late May or early June, 1976 co-conspirator Rodney Crosby delivered a quantity of stock certificates to co-conspirator Ermajean Adams, a/k/a "Teddy's Sister" on Summit Street, Toledo, Ohio.

12. On or about June 3, 1976 the defendant ALBERT DUKE offered to another person certificates of common stock in McGraw's Restaurant, Park Avenue and 41st Street, New York, New York.

13. In or about late May or early June, 1976 co-conspirator Pruitt Williams transported stolen stock certificates representing approximately 10,963 shares of the Reliance Electric and Engineering Company from Toledo, Ohio to New York, New York.

14. In or about early June, 1976 co-conspirator Pruitt Williams delivered the stolen stock certificates of the Reliance Electric and Engineering Company to DONALD NIANG, a/k/a "Donald" and August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy" in New York, New York.

J 15. In early June, 1976, ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J. R." delivered the stolen stock certificates of the Reliance Electric and Engineering Company to the defendant ALBERT DUKE in New York, New York.

16. On June 16, 1976 the defendant ALBERT DUKE handed to another person approximately 9,300 shares of the Potomac Electric Power Company in McGraw's Restaurant, Park Avenue and 41st Street, New York, New York.

(Title 18, United States Code, Section 371.)

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COUNT TWO

The Grand Jury further charges:

On or about the 12th day of May, 1976, in the Southern District of New York, co-conspirators August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy", Ted Adams, Freddie Pettaway, and defendants ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J.R." and DONALD NIANG, a/k/a "Donald", unlawfully, wilfully, and knowingly, did transport, and cause to be transported, in interstate commerce from Toledo, Ohio to New York, New York, securities of a value of more than \$5,000.

to wit, approximately 9,300 shares of the Potomac Electric Power Company and 200 shares of the Houston Natural Gas Corporation, having an approximate total market value of \$118,000.

(Title 18, United States Code, Sections 2314, 3237, and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 12th day of May, 1976, in the Southern District of New York, ALBERT DUKE, ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J. R." and DONALD NIANG, a/k/a "Donald", the defendants, unlawfully, wilfully, and knowingly, did receive, conceal, store, barter, sell, and dispose of securities of a value of more than \$5,000, to wit, approximately 9,300 shares of the Potomac Electric Power Company and 200 shares of the Houston Natural Gas Corporation, having an approximate total market value of \$118,000, which were moving as, were part of, and constituted interstate commerce, knowing the said securities to have been stolen, unlawfully converted and taken.

(Title 18, United States Code, Sections 2315 and 2.)

COUNT FOUR

The Grand Jury further charges:

In or about early June, 1976, in the Southern District of New York, ALBERT DUKE, ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J. R.", and DONALD NIANG, a/k/a "Donald", the defendants, and co-conspirators Pruitt Williams, August Barbine, Jr., a/k/a "James John", a/k/a "Jimmy", Ted Adams and Erma Jean Adams, a/k/a "Teddy's Sister", unlawfully, wilfully, and knowingly, did transport, and cause to be transported, in interstate commerce from Toledo, Ohio to New York, New York, securities of a value of more than \$5,000, to wit, approximately 10,963 shares of the Reliance Electric and Engineering Company, having an approximate market value of \$315,000.

(Title 18, United States Code, Sections 2314, 3237, and 2.)

COUNT FIVE

The Grand Jury further charges:

In or about early June, 1976, in the Southern District of New York, ALBERT DUKE, ALBERT WILLIAMS, a/k/a "Sonny", a/k/a "J.R.", and DONALD NIANG, a/k/a "Donald" the defendants and co-conspirators, Pruitt Williams, August Barbine, Jr., a/k/a "James Johns", a/k/a "Jimmy", and Ted Adams, the defendants, unlawfully, wilfully, and knowingly, did receive, conceal, store, barter, sell, and dispose of securities of a value of more than \$5,000, to wit, approximately 10,963 shares of the Reliance Electric and Engineering Company having an approximate market value of \$315,000, which were moving as, were part of, and constituted interstate commerce, knowing the said securities to have been stolen, unlawfully converted and taken.

(Title 18, United States Code, Sections 2315 and 2.)

Foreman

ROBERT B. FISKE, JR.
United States Attorney

OFFENSE MO 0208 1 0854
 ISDEMEANOR Mis ☐ District Office
 FELONY Fel ☒ (LAST, FIRST, MIDDLE)
 ROE, ROBERT, a/k/a "Donald"
 t/n NIANG, DONALD
 No. of Defs 09 24 76 0916 03
 Yr. Docket No. Def.
 U.S. MAG. CASE NO. 09

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:371	Consp. to trans. stolen prop.	1
18:2314	Interstate trans. of stolen prop.	2&3
18:2315	Receipt of stolen prop.	4&5
18:371	Consp. to transport stolen securities	1
18:2314 & 3237	Interstate trans. of stolen securities	2&4
18:2315	Receipt of stolen securities	3&5

U.S. MAG. CASE NO. 09
 Bail • Release
☐ AMT ☐ Fugitive
☐ Set ☒ Pers. Recog.
☐ JPSA
 \$ 25 000 conditions
☐ Date ☐ JPSA Deposit
☐ Bail Not Made ☐ Surety Bond
☐ Status Changed (See Docket) ☐ 3rd ☐ Other
☐ Priv Cust

II. KEY DATES & INTERVALS
 ARREST or INDICTMENT ☒ ARRAIGNMENT TRIAL
 U.S. Custody Began
 Summons Defers
 First Appearance
 Indictment Date 09-24-76
 Trial Set For
 Trial Begun
 Trial Ended
 10-7-76
 11-24-76

SEARCHED ☐ INDEXED ☐
 SERIALIZED ☐ FILED ☐
 OCT 1 1976
 U.S. ATTORNEY
 Thomas E. Engel
 791-1931
 ATTORNEYS
 Kenneth W. Salway
 125-10 Queens Blvd.
 Kew Gardens, New York 11415
 Tel: 793-2700

DATE	PROCEEDINGS
09-24-76	Filed Indictment & Ordered sealed. B/W Ordered.Palmieri, J.
09-28-76	Indictment Ordered unsealed....Palmieri, J. B/W Issued
10-7-76	Def't. Donald Niang - indicted as Robert Roe (atty not present). Court directs a not guilty plea be entered. Bail \$25,000 PRB continued. Case assigned to Gagliardi, J. for all purposes.Palmieri, J.
10-22-76	Filed Notice of Appearance of Kenneth W. Salway, 125-10 Queens Blvd., Kew Gardens, N.Y. 11415. Tel: 793-2700.
11-16-76	Oct 20, 1976
11-24-76	Filed Superseding Indictment & referred to Gagliardi, J.Cannella, J.
11-29-76	Def't. -hearing held and concluded on suppression. Trial set for 11-30-76 at 10AM. Gagliardi, J.
12-1-76	Def't. pleads not guilty.
12-2-76	Jury trial begun before Judge Gagliardi.
12-3-76	Trial cont'd.

DATE	(DOCUMENT NO.)	Interval Section II (a)	Start Date End Date (b)	Ltr Code (c)	Total Days (d)	Fe Jo U: A
12-2-76	Orig. indictment dismissed on Govt's motion as to this indictment. GAGLIARDI, J.					
12-6-76	Trial cont'd.					
12-7-76	Trial cont'd.					
12-8-76	Trial cont'd. Deft. found guilty on cts. 1-5 incl. P.S.I. ordered. Sentence set for 1-27-77 at 9:30. Deft. continued on present bail until date of sent. Deft. is to report to the Probation Dept. every Tuesday and Friday by 10AM. until date of sent. Gagliardi, J.					
5-18-77	Filed transcript of record of proceedings, dated 11/29/76					
5-18-77	Filed transcript of record of proceedings, dated 11/30/76					
5-18-77	Filed transcript of record of proceedings, dated 12/3/76					
5-18-77	Filed transcript of record of proceedings, dated 12/7/77					
5-18-77	Filed transcript of record of proceedings, dated 12/2, 3, 6, 7, 8, 1/76					
6-10-77	Filed Notice of Appeal by deft to the U.S.C.A from the judgment of 6/2/77. m/n to U.S. Atty & deft.					
06-02-77	Filed JUDGMENT (atty. Kenneth W. Salaway) Cts. 1, 3, 4 & 5: 18 mos. impr. ea. ct. conc. Ct. 2: 6 mos. impr. E.S.S. on ct. 2. 4 yrs. prob. w/super. Dft. to surrender 6-16-77. Dft. cont'd. on bail. Gagliardi, J. issued all copies.					
06-23-77	Deft. (atty. presnet) cont'd. on presnet bail (to be rewritten pending appeal by 6-24-77 or 7-7-77. Gagliardi, J.					
06-27-77	Filed \$25,000. Personal Appearance Bond Pending Appeal. (Unsecured)					
06-27-77	Filed 2nd suppl. record on appeal has been certified and transmitted to the U.S.C.A.					
8-22-77	Filed transcript record of proceedings dtd: 6/2/77					
8-22-77	Filed Notice that 3rd suppl. record on appeal has been certified and transmitted to 2nd Circuit.					
8-29-77	Filed transcript of record of proceedings, dated 11-29-76					

DATE	PROJECT NUMBER	RECEIPT NUMBER	FILE NUMBER

1 jhb-1

642

2 United States of America

3 vs.

76 Cr. 916

4 Albert Duke, Albert Williams
5 a/k/a "Sonny" and "J.R.",
Donald Niang, a/k/a "Donald".

6

New York, New York
December 8, 197 9:45 A.M.

7

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(Trial resumed.)

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(In open court; jury present.)

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THE COURT: Members of the jury, you can recognize that the importance of not having anybody walk in and out of here during the course of this charge is so that you will not be distracted from what I am about to tell you, which is most important, and as I indicated to you yesterday, it will take a little bit of time, and I am not going to rush through it, I am going to attempt to do it in such a way that you understand it. It is a little complicated, but I am sure that with the full attention that you have given to this entire case that you will pay strict attention to what I have to say to you.

Now, you are about to enter upon your final duty, which is to decide the fact issues in this case. We have now reached the point where all the evidence has been presented and the closing arguments of the lawyers

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1 jhb-2

2 have been made and shortly, after I have completed my
3 explanation of the applicable law, you will retire to de-
4 liberate upon your verdict.

5 You are to perform your final duty in an
6 attitude of complete fairness and impartiality. You are
7 to appraise the evidence calmly and deliberately, as was
8 emphasized by me at the time of your selection as jurors,
9 without bias or prejudice with respect to either the Govern-
10 ment or the defendants as parties to this controversy.

11 Now, the fact that this prosecution is brought
12 in the name of the United States of America entitles it to
13 no greater consideration than that of any other party. And
14 by the same token, it is entitled to no less consideration.
15 All parties stand as equals before the bar of justice.

16 Your final role is to pass upon and decide
17 the fact issues in the case. You the members of the jury
18 are the sole and exclusive judges of the facts. You pass
19 upon the weight of the evidence, you determine the credibility
20 of the witnesses, you resolve such conflicts as there may
21 be in the testimony, and you draw whatever reasonable infer-
22 ences are to be drawn from the facts as you have determined
23 them.

24 My function at this point is to instruct you
25 on the law. It is your duty to accept these instructions

1 jhb-3

2 of law and apply them to the facts as you determine the
3 facts to be. The logical result of that application will
4 be your verdict in this case.

5 With respect to any fact matter, it is your
6 recollection and yours alone that governs. Anything that
7 counsel either for the Government or the defense may
8 have said with respect to any matters in evidence, that is,
9 as to any factual matter, whether stated in a question,
10 in argument or in summation, is not to be substituted for
11 your own independent recollection. And so too anything
12 that the Court may have said during the course of this trial
13 with respect to a fact matter or that I may say during the
14 course of these instructions is not to be taken in substitu-
15 tion for your own independent recollection, which governs
16 at all times.

17 Before we consider the precise charges of
18 the indictment a number of preliminary observations may
19 be helpful to you. In determining the facts you should
20 not be influenced by the rulings that the Court may have
21 made during the trial. These rulings dealt with matters
22 of law and not questions of fact. Counsel for both sides
23 had not only the right, but indeed the duty to press whatever
24 legal objections they believed existed as to the admission
25 of offered evidence. The Court's rulings on objections

1 jhb-4

2 made by either the attorneys for the Government or the
3 attorneys for the defendants are not to be considered by
4 you.

5 Of course, as I told you at the outset, where
6 I have sustained an objection to a question you must not
7 speculate on what the witness would have said had he been
8 permitted to answer, nor may you draw any inference from
9 the wording of the question or that it was asked. Similarly
10 where any testimony has been stricken it is not evidence and
11 you are bound to disregard it. However, you must remember
12 that in ruling on objections the Court was deciding ques-
13 tions of law and not questions of fact, which are for you
14 alone.

15 Now, during the course of the trial there
16 were occasions when I admonished counsel. Sometimes in
17 the ardor of advocacy counsel may say or do things which
18 in calmer moments they would not have said or done and
19 any such instance must play no part in your deliberations.
20 The personalities of the lawyers or the Judge have nothing
21 to do with the case.

22 I am aware that a Judge may have some influence
23 with the jury. If you think you have gleaned some
24 indication as to my opinion of the case either from any
25 questions I may have asked or from my expression or tone of

1 jhb-5

2 voice disregard it entirely. The Court has no opinion
3 as to the veracity or the credibility of the witnesses or
4 the guilt or innocence of these defendants. You are the
5 judges of the facts and you are the sole judges of the guilt
6 or innocence of these defendants. I am merely a judge of
7 the law. The fact issues must be decided by you solely
8 and only within the framework of the evidence and the prin-
9 ciples of law that apply.

10 And finally, please don't single out any one
11 instruction of mine here as stating the law alone. Take
12 them all into account after you have heard them all.

13 Now, you are to consider only the evidence
14 in this case, which consists of the sworn testimony of
15 the witnesses, the exhibits which have been received in
16 evidence, the facts which have been stipulated and the pre-
17 sumptions which I will tell you about in these instructions,
18 such as the presumption of innocence. But while you are
19 to consider only the evidence, you are not limited to the
20 bald statements of the witnesses. On the contrary, you
21 are permitted to draw from the facts which you find have
22 been proved such reasonable inferences as seem justified
23 to you in the light of your own experience.

24 An inference is another word for a conclusion
25 which reason or common sense leads you to draw from the

1 jhb-6

2 facts that have been proved here.

3 In considering the evidence you must remember,
4 as I told you at the outset, that the indictment is merely
5 a formal method of accusing a defendant of the crime
6 charged and is not evidence against the defendant, nor is
7 any weight to be given to the fact that an indictment has
8 been returned against the defendants.

9 Generally speaking, there are two types of
10 evidence from which a jury may properly find the truth
11 as to the facts of a case. One is direct evidence, such
12 as the testimony of an eye witness, somebody who saw or
13 heard something done or said. The other is indirect or
14 circumstantial evidence, the proof of a chain of circumstance
15 pointing to the existence or non-existence of certain facts.

16 Generally the law makes no distinction
17 between direct and circumstantial evidence, but simply
18 requires that the jury find the facts in accordance with
19 all the evidence in the case, both direct and circumstantial.

20 We Judges have a simple example of the differ-
21 ence between direct and circumstantial evidence. Some of
22 you may have heard it before in some of the cases on which
23 you have sat. For those that haven't or for those of
24 you who have heard it and have forgotten I will repeat it
25 again.

1 jhb-7

2 Let's assume that today were a nice bright
3 sunshiny day, not a cloud in the sky, visibility was as far
4 as you could see. Now, your observation of that is
5 direct evidence. You can see what the conditions are
6 and you know the type of day it is and what it appears as
7 though it is going to be.

8 Now, let's assume that that is such a day and
9 you came into this courtroom or into the courthouse and that
10 we were in one of those courtrooms right off the front en-
11 trance to this courthouse and that courtroom doesn't have
12 any windows in it and it is one of those modern courtrooms
13 and you can't see outside, and let's assume that we are
14 there for about an hour and you observe a spectator come into
15 the courtroom and his clothes are wet and his hair is
16 dripping water and there is a little bit of water on his
17 face.

18 Let's assume a few minutes later another spec-
19 tator comes in and he has the same kind of appearance
20 about him and he has a hat in his hand and the hat is dripping
21 water. A few minutes later somebody else comes into
22 the courtroom, another spectator, and you observe that
23 spectator, and he has a raincoat on and an umbrella in
24 his hand and the raincoat is wet and the umbrella is
25 dripping water.

Now, you could assume from that chain of

1 jhb-8

2 circumstances or those facts of observing those three
3 spectators coming in that it was raining outside, even
4 though when you had come into the courtroom an hour
5 earlier it was a bright, beautiful day that we would all
6 like to see.

7 Now, that is circumstantial evidence, the
8 chain of circumstances leading to the existence or non-
9 existence of certain facts. And as I have indicated to
10 you before, the Court makes no distinction between direct
11 and circumstantial evidence, but requires you to find the
12 facts in this case based upon all the evidence in the
13 case, both direct and circumstantial.

14 I have indicated that the indictment is not
15 evidence in the case and that the defendants by their
16 pleas of not guilty have put in issue the charges set forth
17 in the indictment. By their plea of not guilty to the
18 charges of the indictment the burden is on the prosecution
19 to prove guilt beyond a reasonable doubt, which I will
20 explain for you later on.

21 This burden never shifts to a defendant for
22 the law never imposes upon a defendant in a criminal case
23 the burden or duty of calling any witnesses or producing
24 any evidence. As I told you early on, the law presumes a
25 defendant to be innocent of crime, and thus a defendant,

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1 jhb-9

2 although accused, begins the trial with no evidence
3 against him, and the law permits nothing but legal evidence
4 presented before you as jurors to be considered in support
5 of any charge against a defendant.

6 The pre. mption of innocence remains with the
7 defendants throughout the trial, in your deliberations,
8 until such time, if ever, as you are satisfied of guilt
9 beyond a reasonable doubt. Thus the presumption of inno-
10 cence alone is sufficient to acquit a defendant, unless and
11 until, after careful and impartial consideration of all the
12 evidence in the case, you as jurors are unanimously con-
13 vinced of a defendant's guilt beyond a reasonable doubt.

14 Now, the indictment here names three defendants
15 and there are five separate counts. In your deliberations
16 it is your duty to give separate personal consideration
17 to the case of each individual defendant and with respect
18 to each individual count. As you do so you should analyze
19 what the evidence in the case shows with respect to
20 that individual, leaving out of consideration entirely any
21 evidence admitted solely against another defendant. Each
22 defendant is entitled to have his case determined from the
23 evidence as to his own acts, statements and conduct,
24 and any other evidence in the case which may be applicable
25 to him. In sum, the case of each defendant as to each

1 jhb-10

2 separate count must be decided upon the proof of each par-
3 ticular charge against that defendant.

4 Now, before I get to the specific charges
5 in the indictment and read parts of it to you, I think
6 it is appropriate for me, although counsel have fully and
7 adequately reviewed the evidence with you yesterday in
8 their summations, and I am not going to go over that again,
9 this has been a comparatively short trial and I don't think
10 it's appropriate for me at this time to review it again,
11 but I do think it might be helpful for you if I read to
12 you the list of the witnesses as they appeared in the
13 case, and I may or may not indicate the position or title
14 that they hold.

15 The first witness in this case was Rodney F.
16 Crosby, who at one time was an employee of the Toledo
17 Trust Company. The second witness was Ted Adams. He
18 was followed on the stand by Pruitt Williams. The fourth
19 witness was August Barbine, Jr. He was followed on the
20 stand by Robert Black, assistant treasurer of the Toledo
21 Trust Company, and then by Allen Harris, also another
22 official or employee of the Toledo Trust Company. The
23 next witness was John Wesley Thomas, in charge of auditing
24 of records of some sort of the United Airlines Company.

25 Following that there was a stipulation that

1 if a witness were called from the telephone company he
2 would testify that certain records were kept in the regular
3 course of the company's business, and I believe that these
4 records are Exhibits 27A and B and 28A and C, which have
5 been received in evidence.
6

7 The next witness was John Curran, special agent
8 of the Federal Bureau of Investigation. He was followed
9 on the stand by Craig Dotlo, also a special agent of
10 the Federal Bureau of Investigation, then John Hauss,
11 also a special agent of the Federal Bureau of Investigation,
12 and the Government's last witness was Damon Taylor, also a
13 special agent of the Federal Bureau of Investigation.

14 At that point the Government rested its case,
15 completed its direct evidence.

16 The defendant Duke then called to the stand
17 John Lewis, who was employed at the Metropolitan Hospital,
18 John Lewis, Jr., a half brother, I guess, of the defendant
19 Duke, and then Abdul Hagg Taha at that time was the last wit-
20 ness, at which time Mr. Duke rested his case.

21 The defendant Williams called as a witness
22 Samuel B. Price, executive director of Neighborhood Board
23 Number 2, and then Louis Miller, Jr., who was not otherwise
24 identified in any way, and then defendant Williams rested.

25 Defendant Niang, Mr. Donald Niang, the defendant

1 jhb-12

2 here, took the stand, and upon the completion of his testi-
3 mony defendant Niang rested.

4 Mr. Duke then reopened his case and put on the
5 last witness, who was the witness you saw here yesterday,
6 Shadid Riza.

7 First of all, and before I get to this, let me
8 tell you that this case is not in any way nor should it be
9 determined by you in connection with whether or not you
10 like the FBI, whether or not you like the Black Muslims.
11 Neither of those things have anything to do with this case.
12 Nor should you consider it in any way whatsoever. I
13 told you at the beginning of the case that your primary
14 function was to assess the credibility of witnesses and
15 any such issues that might have been raised here or inti-
16 mated have absolutely nothing to do with this case.

17 Now, against this background we turn now to
18 Count 1. Incidentally, you will have in the jury room
19 with you a copy of the indictment. I am not going to read
20 the entire indictment to you. I will summarize parts of
21 it. But you will have the entire indictment with you in
22 the jury room.

23 The first count is the conspiracy count and
24 that count charges the defendants with violating Title 18
25 United States Code, Section 371, and that law provides in

1 jhb-13

2 pertinent part as follows:

3 "If two or more persons conspire either to
4 commit any offense against the United States or to defraud
5 the United States or any agency thereof in any manner or
6 for any purpose and one or more of such persons do
7 any act to effect the object of the conspiracy", each is
8 guilty of a crime.

9 The statutes with which the defendants are
10 charged with conspiring to violate are Sections 656, 2314 and
11 2315 of Title 18 of the United States Code. You don't
12 have to remember these section numbers. What is important
13 is what they provide.

14 I will read Sections 2314 and 2315 in a moment,
15 when I explain -- it will be more than a moment -- when
16 I explain the other counts of the indictment. But Section
17 656 provides in pertinent part:

18 "Whoever, being an employee of any insured bank,
19 embezzles, abstracts, purloins or wilfully misapplies any
20 of the moneys, funds or credits of such bank or any moneys,
21 funds, assets or securities entrusted to the custody or care
22 of such bank" commits a crime.

23 Now, you can't take these instructions in a
24 vacuum, but when they refer to insured bank that means
25 a bank whose assets are insured with the Federal Deposit

1 jhb-14

2 Insurance Corporation, and while I say it is your recollec-
3 tion of the testimony that governs at all times, I believe
4 that one of the officers of the bank did testify that the
5 assets of that bank were insured with the Federal Deposit
6 Insurance Corporation. But again, that is a finding that
7 you must make, as all findings of fact must be made by you.

8 Now, the conspiracy count, Count 1, charges that
9 from on or about the first day of March 1976, up to and
10 including the date of the filing of this indictment, which
11 was November 24, 1976, in the Southern District of New York
12 and elsewhere, the defendants Albert Duke, Albert Williams,
13 also known as Sonny, and Donald Niang, also known as
14 Donald, conspired together with co-conspirators Rodney
15 Crosby, August Barbine, Jr., also known as James Jones,
16 also known as Jimmy, Ted Adams, Pruitt Williams, Freddie
17 Pettaway and Erma Jean Adams, who are not on trial, and
18 with others, to violate the Bank Embezzlement and National
19 Stolen Property Acts.

20 The charge indicates that it was part of this
21 conspiracy that the defendants and co-conspirators would
22 embezzle stock certificates and bond coupons worth
23 approximately \$600,000 from the Toledo Trust Company, Toledo,
24 Ohio, where Crosby worked, transport and cause to be
25 transported in interstate commerce the stock certificates

1 jhb-15

2 and bond coupons which they knew to be stolen and which
3 were worth \$5000 or more, specifically, approximately
4 \$500,000, and that the defendants and co-conspirators would
5 receive, conceal, barter and sell such securities which were
6 moving as and were part of interstate commerce.

7 Now, there are two parts to the conspiracy
8 count. That's the first part. The second part refers to
9 overt acts, which I will read to you later. They are not
10 separate and distinct counts. It is all one count, but
11 they are divided into two sections.

12 Before you may find a defendant guilty of con-
13 spiracy as charged in the first count of the indictment
14 you must find the following three elements beyond a reason-
15 able doubt:

16 First, that some time approximately between
17 March 1, 1976 and November 24, 1976, an agreement or under-
18 standing existed between any two or more conspirators,
19 whether named as defendants or as co-conspirators, to
20 commit at least one of the crimes charged in the indictment,
21 namely, transport stolen securities worth more than \$5000 in
22 interstate commerce or to receive or sell stolen securities.
23 In short, the Government must prove that a conspiracy
24 existed with respect to transporting stolen securities or
25 selling stolen securities. That is the first element.

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2 The second element is that the particular
3 defendant, Albert Duke, Albert Williams, Donald Niang,
4 knowingly and wilfully became a participant in the conspiracy
5 with knowledge of at least one of its criminal purposes.

6 And the third element is that one of the
7 conspirators knowingly committed at least one overt act set
8 forth in the indictment at or about the time alleged in fur-
9 therance of the conspiracy and that at least one of these
10 acts was committed in the Southern District of New York,
11 which includes a number of counties, but for our purpose all
12 we need to know is that it also includes Manhattan and the
13 Bronx, New York County and Bronx County.

14 Now, with respect to each of these elements
15 I think further explanation is required. First, what
16 is a conspiracy?

17 Simply defined, a conspiracy is a combination
18 of two or more persons by concerted action to accomplish
19 some unlawful purpose. A conspiracy is an unlawful agreement
20 unlawful combination to violate the law.

21 Whether or not the persons charged in the
22 indictment accomplished what it is alleged they conspired
23 to do is immaterial to the question of guilt or innocence.
24 Thus the success or lack of success of the conspiracy
25 doesn't matter, for a conspiracy is a crime entirely

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separate and distinct from what we call the substantive crime that may be the goal or object of the conspiracy.

A conspiracy has sometimes been called a partnership in criminal purpose in which each member becomes the agent of every other member. However, to establish the existence of a conspiracy the Government is not required to show that two or more persons sat around a table and entered into a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth the details of the plan, the means by which it is to be carried out, or the part to be played by each conspirator.

Your common sense will tell you that when men undertake to enter into a conspiracy much is left to unexpressed understanding. Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public, nor do they publicly broadcast their plans. A conspiracy is almost always characterized by secrecy.

In determining the existence or non-existence of a conspiracy it is not required that you find that each and every one of the alleged co-conspirators joined in the conspiracy. It is sufficient if you find beyond a reasonable doubt that two or more persons in any manner, through any contrivance, impliedly or tacitly came to a

1 jhb-18

2 common understanding to violate the law.

3 In determining whether there has been an unlaw-
4 ful agreement you may consider acts and conduct which are
5 done to carry out a criminal purpose. Usually the only
6 evidence available is that of disconnected acts on the
7 part of the alleged individual conspirators, which acts
8 you may find when taken together, in connection with each
9 other, and with the reasonable inferences flowing therefrom,
10 show a conspiracy or agreement to secure a particular result
11 as satisfactorily and conclusively as more direct proof.

12 If upon all the evidence, both direct and cir-
13 cumstantial, you find beyond a reasonable doubt that the
14 minds of at least two of the alleged conspirators met
15 in an understanding way and that they agreed, as I have
16 defined a conspiratorial agreement to you, to work together
17 in furtherance of the unlawful scheme alleged in the
18 indictment, and that thereafter at least one of the co-
19 conspirators did any overt act in the Southern District
20 of New York to effect the object of the conspiracy, then
21 proof of the existence of the conspiracy is established.

22 In this connection it is not necessary, as
23 I told you before, for the Government to prove the success
24 of the conspiracy in order to establish a violation of
25 the conspiracy statute. As a conspiracy is basically the

1 jhb-19

2 agreement to violate the law, it may exist even though the
3 final objectives were never accomplished.

4 Now, perhaps something further will be helpful
5 to you. You will recall that I defined a conspiracy
6 as a combination of two or more persons by concerted
7 action to accomplish some unlawful purpose. Thus before
8 you may find that a conspiracy existed you must also find
9 that what the conspirators intended to do would have violated
10 one or more Federal laws if they had succeeded in accom-
11 plishing what they set out to do.

12 Finally, with respect to the existence of
13 the conspiracy, the indictment alleges that the conspiracy
14 commenced on or about March 1, 1976, and continued up
15 until November 24, 1976, which was the filing of the indict-
16 ment. It is not necessary for the Government to prove
17 that the conspiracy started and ended on those specific
18 dates. It is sufficient if you find that in fact a con-
19 spiracy was formed and that it existed for some substantial
20 time within the period set forth in the indictment and that
21 at least one overt act was committed during that period.

22 A conspiracy once formed continues for as long
23 as the evidence shows the conspirators intended to continue
24 it. Such intention may be inferred from such activities,
25 if any, of the conspirators which you find to be in further-

1 jhb-20

2 ance of the purpose of the conspiracy.

3 Now, the second element, entitled participation
4 in the conspiracy. If you find beyond a reasonable doubt
5 that the conspiracy charged in the indictment existed you
6 must determine who its members were. In determining whether
7 a defendant may be a member of the conspiracy you must
8 determine not only whether he participated in it, but whether
9 he did so with knowledge of its unlawful purpose. Did he
10 join with an awareness of at least some of the aims and
11 purposes of the conspiracy?

12 Knowledge is a matter of inference from facts
13 proved. It is not necessary -- Mr. Zalowitz.

14 MR. ZALOWITZ: Yes.

15 THE COURT: Knowledge is a matter of inference
16 from facts proved. It is not necessary that a defendant
17 or a conspirator be fully informed as to the details of
18 the scope of the conspiracy in order to justify an inference
19 of knowledge. A defendant need not know the full extent
20 of the conspiracy and all of its activities and actors.

21 However, mere association with one or more of
22 the conspirators does not make one a member of the conspiracy
23 nor is knowledge without participation sufficient. What
24 is necessary is that the defendant participate with
25 knowledge of at least some of the purposes of the conspiracy

1 jhb-21

2 and with the intent to aid in the accomplishment of these
3 unlawful ends.

4 If you find that the conspiracy existed and
5 that a particular defendant knowingly participated in it,
6 the extent of his participation has no bearing on the
7 question of guilt or innocence. The guilt or innocence
8 of a conspirator is not measured by the extent or the dura-
9 tion of his participation. Even if he participated in
10 it to a degree more limited than one of his co-conspirators,
11 he is equally culpable, so long as he was in fact a con-
12 spirator.

13 If one joined the conspiracy after its forma-
14 tion and engaged in it to a more limited degree than other
15 co-conspirators, he is equally culpable, so long as you find
16 beyond a reasonable doubt that he was in fact a co-
17 conspirator. Thus each member of a conspiracy may perform
18 separate and distinct acts at different times and at differ-
19 ent places. Some conspirators may play major roles while
20 others may play minor roles. In other words, it is not
21 required that a person be a member of the conspiracy from the
22 very start. He may join it at any point during its
23 progress and be held responsible for all that has been done
24 before he joined and all that may be done thereafter
25 during its existence and while he remains a member. Simply

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1 stated, using the partnership analogy, by becoming a
2 partner he assumes all the liabilities of the partnership,
3 including those that occurred before he became a member.
4 Similarly, each conspirator need not know the identity or
5 the number of all his confederates. The conspirators may
6 not have previously associated together. One of them may
7 know only one other member of the conspiracy, but if he
8 enters into an unlawful agreement with that other member
9 of the conspiracy he becomes a party thereto. Nor is it
10 necessary that a conspirator receive any pecuniary benefit
11 from his participation in the conspiracy, as long as he in fact
12 participated in it in the way I have instructed you.
13

14 The question is did a defendant join the
15 others with the awareness of at least some of the basic
16 purpose and aims of the conspiracy. If so, then he adopts
17 as his own the past and future acts of all the other con-
18 spirators.

19 Now, early on we took some testimony subject
20 to connection. I am going to reread for you now what I
21 read at that time.

22 In determining whether a conspiracy existed
23 you should consider the acts and declarations of all the
24 alleged participants. However, in determining whether
25 a particular defendant was a member of the conspiracy you

1 jhb-23

2 may consider only his own acts and statements. He cannot
3 be bound by the acts or declarations of other alleged
4 participants unless and until you are satisfied beyond
5 a reasonable doubt that a conspiracy existed and that the
6 defendant you are then considering was one of its members.

7 In other words, your determination as to the
8 participation in the conspiracy of each defendant must be
9 based upon what you find to have been his own actions, his
10 own conduct, his own statements or declarations, his
11 connection with the acts and conduct of other alleged
12 co-conspirators, and the reasonable inferences to be drawn
13 therefrom.

14 You will recall that during the course of the
15 trial evidence was received subject to connection. Thus
16 testimony concerning acts or statements of one alleged co-
17 conspirator done or said in the absence of other alleged
18 co-conspirators although received in evidence without limi-
19 tation against the alleged co-conspirator who did the act or
20 made the statement or admission was admitted into evidence
21 as to the absent alleged co-conspirator on a conditional
22 or tentative basis.

23 If you find that a conspiracy existed and if
24 you find, as I have defined it to you, that a particular
25 defendant was one of its members, then the statements

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thereafter knowingly made and the acts thereafter knowingly done by any person likewise found to be a member of the conspiracy can be considered by you as evidence in the case as to any conspirator found to be a member of the conspiracy, even though the statements and acts may have occurred in the absence and without the knowledge of that conspirator, provided such statements and acts were knowingly made and done during the continuance of such conspiracy and in furtherance of some object or purpose of the conspiracy. Thus statements of any conspirator which are not in furtherance of the conspiracy or which are made before its existence or after its termination may be considered as evidence only against the person making them.

A final word on this second element. I told you that a conspiracy once formed is presumed to have continued until either its object was accomplished or there is some affirmative act of termination by its members. So too once a person is found to be a member of a conspiracy he is presumed to continue his membership therein until the termination and the burden is upon the conspirator to satisfy you by affirmative proof that he withdrew and disassociated himself from it.

So much for the first part of the conspiracy count. It was only one count, again, I remind you.

11b-25

but it is in two sections. The second section refers to so-called overt acts.

If you find under the instructions that I have given you that the alleged conspiracy existed and that the particular defendant was a member of the conspiracy you must then consider the third element, the requirement of an overt act.

The overt acts referred to in Count 1 are not separate charges. They are part of the conspiracy count and you may not find a defendant guilty unless and until you are convinced beyond a reasonable doubt that at least one of the overt acts charged in the indictment was knowingly and wilfully committed by at least one of the conspirators and that at least one act was committed in the Southern District of New York.

The offense of conspiracy is complete when the unlawful agreement is made and any overt act is done by a conspirator to, in the language of the statute, "effect the object of the conspiracy". Thus an overt act is an act knowingly and wilfully committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be a criminal act or an act which of itself constitutes an objective of the conspiracy. It may be an act which is innocent on its

1 jhb-26

2 case, but it must be of such character that it furthers
3 or promotes or aids and assists in accomplishing a purpose
4 of the conspiracy charged in the indictment.

5 It is not necessary for you to find that all
6 of the alleged overt acts charged in the indictment were
7 committed, nor is it necessary that an overt act involve
8 a particular defendant. It is enough if you find that at
9 least one of the named overt acts charged in the indictment
10 was committed by a conspirator in furtherance of the
11 conspiracy.

12 Following are the overt acts set forth in the
13 indictment, again, which I say you will have with you.

14 In furtherance of the said conspiracy and to
15 effect the objects thereof the following overt acts, among
16 others, were committed in the Southern District of New York
17 and elsewhere:

18 "1. In early April 1976 co-conspirators Rodney
19 Crosby and August Barbino, Jr., also known as James Jones,
20 also known as Jimmie, had a conversation in the vicinity
21 of Rockliff Road, Atlanta, Georgia.

22 "2. In early May 1976 co-conspirators Rodney
23 Crosby, August Barbino, Jr., and Ted Adams met in the
24 vicinity of 669 Pinewood Street, Toledo, Ohio.

25 "3. On or about May 5, 1976, co-conspirator

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2 Rodney Crosby took an envelope containing stock certificates
3 of the Potomac Electric Power Company and the Houston
4 Natural Gas Corporation from the mail room of the Toledo
5 Trust Company and delivered it to co-conspirator Ted Adams
6 standing near a bus stop on Summit Street, Toledo, Ohio.

7 "4. On or about May 5, 1976, co-conspirator
8 Ed Adams in Toledo, Ohio made a telephone call to co-
9 conspirator Freddie Pettaway in New York, New York.

10 "5. On or about May 6, 1976, the defendant
11 Donald Niang, also known as Donald, in New York, New York
12 made a telephone call to co-conspirators Ted Adams and August
13 Barbino, Jr., also known as James Jones, also known as
14 Jimmie, in Toledo, Ohio."

15 The next one. "On or about May 12, 1976,
16 co-conspirators, Ted Adams and August Barbino, Jr., also
17 known as James Jones, also known as Jimmie, flew on United
18 Airlines Flight 5y2 from Toledo, Ohio to Newark, New Jersey,
19 carrying stock certificates of the Potomac Electric Power
20 Company and the Houston Natural Gas Corporation."

21 The next one. "On or about May 12, 1976, co-
22 conspirators Ted Adams and August Barbino, Jr., also known
23 as James Jones, also known as Jimmie, and defendant Albert
24 Williams, also known as Sonny, also known as A.W., and
25 Donald Niang, also known as Donald, drove to a store in the

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vicinity of Lenox Avenue, New York, New York."

The next one. "In mid-May 1976, co-conspirator Rodney Crosby took a quantity of stock certificates from the Toledo Trust Company and delivered them to co-conspirator Ted Adams on Summit Street, Toledo, Ohio."

The next one. "In mid-May 1976, the defendant Albert Williams, also known as Sonny, also known as J.R., and Donald Niang, also known as Donald, delivered quantities of stock certificates and bond coupons to the defendant Albert Duke in New York, New York."

The next one. "In or about late May or early June 1976, co-conspirator Rodney Crosby delivered a quantity of stock certificates to co-conspirator Ermajean Adams, also known as Teddy's sister, on Summit Street, Toledo, Ohio."

The next one. "On or about June 3, 1976, the defendant Albert Duke offered to another person certificates of common stock in McGraw's Restaurant, Park Avenue and 41st Street, New York, New York."

The next one. "In or about late May or early June 1976, co-conspirator Pruitt Williams transported stolen stock certificates representing approximately 10,962 shares of the Reliance Electric & Engineering Company from Toledo, Ohio to New York, New York."

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2 The next one. "In or about early June 1976,
3 co-conspirator Pruitt Williams delivered the stolen stock
4 certificates of the Reliance Electric & Engineering Company
5 to Donald Niang, also known as Donald, and August Darbine,
6 Jr., also known as James Jones, also known as Jimmie, in
7 New York, New York."

8 The next one. "In early June 1976, Albert
9 Williams, also known as Sonny, also known as J.R., delivered
10 the stolen stock certificates of the Reliance Electric
11 & Engineering Company to the defendant Albert Duke in New
12 York, New York."

13 And the final one. "On June 16, 1976, the
14 defendant Albert Duke handed to another person approximately
15 9300 shares of the Potomac Electric Power Company in McGraw's
16 Restaurant, Park Avenue and 41st Street, New York, New
17 York."

18 Now, in defining the elements of the conspiracy
19 I have used the words knowingly and wilfully. A person
20 acts knowingly if he acts voluntarily and intentionally
21 and not because of mistake or accident or other innocent
22 reason. The purpose of adding the word knowingly was
23 to insure that no one would be convicted for an act done
24 because of mistake or accident or other innocent reason.

25 A person acts wilfully if he acts voluntarily

1 jbb-30

2 and intentionally and with the specific intent to do some-
3 thing the law forbids, that is to say, with bad purpose
4 either to disobey or disregard the law.

5 These then are the essential elements necessary
6 to establish a conspiracy, and I will resummairize them.

7 First, a conspiracy existed as charged in the indictment
8 second, that the particular defendant knowingly and wilfully
9 joined the conspiracy; and third, that one of the conspirators
10 knowingly and wilfully committed at least one of the overt
11 acts set forth in the indictment, and you must be satisfied
12 that the Government has established each of these elements
13 beyond a reasonable doubt.

14 Now, as I told you, the law makes a conspiracy
15 a separate and distinct offense from what we call any sub-
16 stantive offenses which are alleged to have been the object
17 of the conspiracy. The indictment alleges four substantive
18 counts in addition to the conspiracy count that I have
19 already discussed with you.

20 Counts 2 and 4 of the indictment charge the
21 defendants with violating Title 18 United States Code,
22 Section 2384 and 18 United States Code, Section 2, a section
23 which relates to aiding and abetting the substantive
24 offense, which I will describe to you later.

25 Section 18 United States Code, Section 2384

provides in pertinent parts:

"Whoever transports in interstate or foreign commerce any securities or money of the value of \$5000 or more knowing the same to have been stolen, converted or taken by fraud" commits a crime.

I will read to you Counts 2 and 4 of the indictment. I won't summarize them because they are reasonably short.

"Count 2. The grand jury further charges:

"On or about the 12th day of May 1976, in the Southern District of New York, co-conspirators August Barbine, Jr., also known as James Jones, also known as Jimmie, Ted Adams, Freddie Pettaway, and the defendants Albert Williams, also known as Sonny, also known as J.P., and Donald Niang, also known as Donald, unlawfully, willfully and knowingly did transport and cause to be transported in interstate commerce from Toledo, Ohio to New York, New York, securities of a value of more than \$5000, to wit, approximately 9300 shares of Potomac Electric Power Company and 200 shares of the Houston Natural Gas Corporation, having an approximate total market value of \$118,000."

Now, Count 4 charges a violation of the same section and reads as follows:

"In or about early June 1976, in the Southern

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District of New York, Albert Duke, Albert Williams, also known as Sonny, also known as J.R., and Donald Niang, also known as Donald, the defendants, and co-conspirators Pruitt Williams, August Barbine, Jr., also known as James Jones, also known as Jimmie, and Ted Adams and Bernice Adams, also known as Teddy's sister, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce from Toledo, Ohio to New York, New York, securities of a value of more than \$5000, to wit, approximately 10,963 shares of the Reliance Electric & Engineering Company, having an approximate market value of \$315,000."

Now, to find a defendant guilty of the crime charged in Counts 2 and 4 you must find beyond a reasonable doubt each of the following elements:

- 1, that the stock certificates in question were stolen by someone.
- 2, that the defendant transported or caused the transportation of the property in interstate commerce.
- 3, that when the stock was transported in interstate commerce the defendant in question knew it was stolen.
- And 4, that at the time of the transportation the value of the stock was \$5000 or more.

Now, in the National Stolen Property Act, Title 18 United States Code, Section 2311, some of the terms are

1 jnb-33

2 defined. Securities includes a stock certificate.

3 Title 18 United States Code, Section 10
4 defines interstate and foreign commerce. The term inter-
5 state commerce includes commerce between one state, territor-
6 possession or the District of Columbia and another State,
7 territory, possession or the District of Columbia. In
8 this regard I charge you that the transportation of secur-
9 ities between Toledo, Ohio and New York, New York is
10 transportation in interstate commerce.

11 The term foreign commerce includes commerce
12 between a foreign country.

13 The first element of the crime charged in
14 Counts 2 and 4 is that the stock certificates were stolen.
15 I don't have to explain to you, I think, what the word
16 stolen means.

17 The second element is that the defendants trans-
18 ported or caused to be transported the securities in inter-
19 state commerce.

20 With regard to the defendants on trial here, it
21 is not necessary for the Government to show that any one
22 of these defendants personally transported the securities in
23 interstate commerce. You may find a defendant now on
24 trial guilty of the offense charged in Count 2 or 4 if you
25 find beyond a reasonable doubt that another defendant or

co-conspirator transported the securities from Toledo, Ohio to New York, New York and that the defendant under consideration by you caused him to transport the securities or aided or abetted him in doing so.

The third element of the offense charged in Counts 2 and 4 is that the defendant knew that the securities were stolen when he transported them or caused them to be transported in interstate commerce. I will charge you as to the meaning of the term knowledge later on.

In addition, if you find beyond a reasonable doubt that a defendant was in possession of securities which had been recently stolen in another State you may, but need not, infer that the defendant knew the securities were stolen and also that he transported or caused them to be transported in interstate commerce.

The term recently is a relative term which has no fixed meaning. Whether property may be considered as recently stolen depends upon the nature of the property and all the facts and circumstances shown by the evidence. The longer the period of time since the theft the weaker is the inference.

Now, the fourth element, which is value, that the stocks had a value of more than \$5000. Under Section 2311 of Title 18, value is defined as follows:

1 "Value means the face, par or market value,
2 whichever is the greatest, and the aggregate value of all
3 securities referred to in a single indictment shall consti-
4 tute a value thereof."

5
6 As I said, you can't take these instructions
7 in a vacuum. I think the securities that were introduced
8 into evidence may or may not indicate a par value. There
9 was testimony, whether you accept it or not, to the effect
10 -- again, it's your recollection that governs -- by a special
11 agent that at the time he claims the securities were handed
12 to him he was informed that they had a value of some
13 \$120,000. But it's your recollection that governs and not
14 mine.

15 I instruct you that the fact that a certificate
16 for shares of stock is not negotiable unless properly
17 endorsed does not mean that it is without value. The fact
18 that some or all of these securities may not have been
19 negotiable is not important if you find that their aggregate
20 face, par or market value exceeded \$5000.

21 Now, with regard to Counts 2 and 4 and also 3
22 and 5, Title 18, United States Code, Section 2 provides in
23 pertinent part as follows:

24 "Whoever commits an offense against the United
25 States or aids, abets or counsels, commands, induces or

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2 procures its commission is punishable as a principal."

3 This means that not only is the person who
4 actually commits an illegal act, that is, the principal,
5 punishable, but anyone who aids and abets him in committing
6 that act is likewise guilty of a crime. Accordingly,
7 you may find any of the defendants guilty of the offense
8 charged if you find beyond a reasonable doubt that the
9 offense was committed and that the particular defendant
10 you are considering aided and abetted in its commission.

11 To aid and abet does not mean just knowing that
12 a crime is being committed, even if one is present during
13 its commission. That alone is not sufficient. In order
14 to find that a defendant aided and abetted another to
15 commit a crime you must be satisfied beyond a reasonable
16 doubt that he knowingly, in some substantial measure,
17 associated himself with the venture, that he participated
18 in it as something he wished to bring about, and that he
19 sought by his action to make it successful.

20 In other words, if one, fully aware of what he
21 is doing, plays a significant role in facilitating a
22 transaction prohibited by law, he is actually guilty with
23 the person who directly performs the illegal acts, even
24 though the latter played a greater or much larger role in
25 the perpetration of the crime.

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2 The evidence of a defendant's participation
3 may be circumstantial, from which you may conclude that
4 a defendant, as an aider and abettor, was a participant
5 in the crime charged. A single act may come within
6 the prohibition of the aiding and abetting law. Whether
7 one aided and abetted another to commit a crime must be
8 determined solely upon the alleged aider and abettor's own
9 conduct, acts or statements.

10 Now, with respect to Counts 3 and 5, the perti-
11 nent section provides as follows:

12 "Whoever receives, conceals, stores, barter,
13 sells or disposes of any securities or money of the value
14 of \$5000 or more, moving as or which are a part of or which
15 constitute interstate or foreign commerce, knowing the same
16 to have been stolen, unlawfully converted or taken," is
17 guilty of a crime.

18 I will read to you Counts 3 and 5.

19 "Count 3. The grand jury further charges:

20 "On or about the 12th day of May 1976, in the
21 Southern District of New York, Albert Duke, Albert Williams,
22 also known as Sonny, also known as J.R., and Donald Nianq,
23 also known as Donald, the defendants, unlawfully, wilfully
24 and knowingly did receive, conceal, store, barter, sell
25 and dispose of securities of a value of more than \$5000, to

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2 wit, approximately 9300 shares of the Potomac Electric
3 Power Company and 200 shares of the Houston Natural Gas
4 Corporation, having an approximate total market value of
5 \$118,000, which were moving as, were part of and constitute
6 interstate commerce, knowing the said securities to have
7 been stolen, unlawfully converted and taken."

8 Count 5 reads substantially the same as
9 Count 3, with appropriate differences.

10 "Count 5. The grand jury further charges:

11 "In or about early June 1976, in the Southern
12 District of New York, Albert Duke, Albert Williams, also
13 known as Sonny, also known as J.R., and Donald Niang, also
14 known as Donald, the defendants, and co-conspirators Pruitt
15 Williams, August Barbino, Jr., also known as James Jones,
16 also known as Jimmie, and Ted Adams, the defendants, unlaw-
17 fully, wilfully and knowingly did receive, conceal, store,
18 barter, sell and dispose of securities of a value of more
19 than \$5000, to wit, approximately 10,963 shares of the
20 Reliance Electric & Engineering Company, having an approx-
21 imate value of \$315,000, which were moving as, were part of
22 and constituted interstate commerce, knowing the said
23 securities to have been stolen, unlawfully converted and
24 taken."

25 With respect to these two charges, Counts 3 and

1 JMB-39

2 5, in order to find a defendant guilty on these charges
3 you must find the following beyond a reasonable doubt:

4 1, that on or about the dates alleged in each
5 count the defendant received or concealed or stored or
6 bartered, or sold, or disposed of more than \$5000 worth
7 of the property named therein.

8 2, that the property received, concealed,
9 bartered, sold or disposed of had been stolen.

10 3, that defendant knew the property was stolen
11 at the time when he received, concealed, stored, bartered,
12 sold or disposed of it.

13 4, that the property constituted interstate
14 commerce between Toledo, Ohio and New York, New York.

15 And 5, that the defendant acted wilfully and
16 knowingly.

17 Now, the first three elements of this are self-
18 explanatory and I don't believe they need any further
19 explanation.

20 The fourth element, namely, that the property
21 constituted interstate commerce, in order to convict the
22 defendants or a defendant on Counts 3 and 5, you must find
23 beyond a reasonable doubt that the property he received or
24 concealed or stored or bartered or sold or disposed of
25 constituted interstate commerce between Toledo, Ohio and

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2 New York, New York.

3 I will charge you that articles constituting
4 interstate commerce do not lose their interstate character
5 immediately upon their arrival in one State from another.
6 If you find that by one means or another the property was
7 brought from Toledo, Ohio to New York, New York for pur-
8 poses of sale, pledging or other disposal, so that the sale,
9 pledging or other disposal was an incident of its trans-
10 portation, then you may find that the property had not
11 lost its interstate character by the time it entered a
12 defendant's possession, if in fact you find that it did so
13 enter the possession of a defendant.

14 I also charge you in this respect that if you
15 find that the property constituted interstate commerce it
16 does not matter whether the defendant himself possessed
17 it in more than one State or in only one State.

18 Finally, it is not necessary for the Government
19 to prove that the defendant knew the property had come from
20 another State in order to sustain its burden on this count.

21 Now, I have used the terms here wilfully and
22 knowingly. I told you that before, I will repeat it again.
23 An act is done knowingly if it is done voluntarily and
24 purposefully and not because of mistake, accident, mere
25 negligence or other innocent reason. It is wilful if it is

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2 done knowingly and deliberately, with an evil motive or
3 purpose.

4 In determining whether a defendant has acted
5 knowingly and wilfully it is not necessary for the Government
6 to establish that the defendant knew that he was breaking
7 any particular law or any particular rule.

8 Now, with respect to Counts 2 through 5, I have
9 charged you as a principal a person may be responsible, I
10 have also charged you that a person may be responsible under
11 the aiding and abetting instructions that I have given to you.
12 There is an additional theory which the Government relies on
13 with respect to the substantive counts.

14 If you find that the conspiracy existed and that
15 certain persons were members of that conspiracy, if you
16 find a defendant participated in the conspiracy, then
17 however limited you find his own individual role in furthering
18 the objectives of the conspiracy, he is responsible for
19 all that was done in furtherance of the conspiracy during
20 its continuance and during the time that he was a member
21 or that you find him to be a member of the conspiracy.

22 Once you are satisfied beyond a reasonable
23 doubt that a conspiracy existed and that the defendant was
24 a member, then the acts, all acts, including criminal acts,
25 and declarations of any other person who you also find was

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2 a member of the conspiracy made by such co-conspirators
3 during the conspiracy's existence and in furtherance of its
4 objectives are considered the acts and declarations of
5 the defendant even though he was not present, if you find
6 that he was in fact a member of the conspiracy at the time
7 of the commission of those acts.

8 Therefore, if you find beyond a reasonable
9 doubt that a defendant participated in the conspiracy
10 charged in Count 1 of the indictment, then you may find
11 him guilty of the charges in Counts 2 through 5 of the
12 indictment, if you find beyond a reasonable doubt, on the
13 instructions that I have given you, that the crimes charged
14 in Counts 2 through 5 were committed by one of the con-
15 spirators during and in furtherance of the conspiracy and
16 during the time which you find that that particular defend-
17 ant was a member of the conspiracy.

18 You will be relieved to know that we are getting
19 near the end of my instructions. That concludes, actually,
20 my instructions as to the specific counts. But before you
21 go into deliberations there are obviously a few additional
22 comments that I have to give you.

23 Perhaps you wonder why I waited this long to
24 define for you what a reasonable doubt is. I told you that
25 a defendant is presumed innocent and the presumption remains

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2 with a defendant unless and until you are unanimously
3 satisfied of guilt beyond a reasonable doubt, and in
4 describing the various elements of each crime I have
5 told you that you had to find those also beyond a reasonable doubt
6 and naturally you ask what is a reasonable doubt.

7 The words almost define themselves, that there
8 is a doubt founded in reason and arising out of evidence
9 or lack of evidence. It is a doubt which a reasonable
10 person has after carefully considering all the evidence.

11 A reasonable doubt is not a vague or specula-
12 tive or imaginary doubt. It is not caprice, whim or
13 speculation. It is not an excuse to avoid the performance
14 of an unpleasant duty. It is not sympathy for a defendant.

15 A reasonable doubt is a doubt which appeals
16 to your reason, your common sense, your experience and
17 your judgment. It is a doubt which would cause a reasonable
18 person like yourselves to hesitate to act in relation to
19 your own important private affairs.

20 Mere suspicion will not justify a conviction.
21 Suspicion is not a substitute for evidence, nor is it
22 sufficient to convict if you find that the circumstances
23 merely render an accused probably guilty.

24 On the other hand, it is not required that the
25 Government prove guilt beyond all possible doubt, but the

proof must be of such convincing character that you would be willing to rely and act on it in the important affairs of your own life.

In sum, a reasonable doubt exists whenever after a fair and impartial consideration of all the evidence before you you can candidly and honestly state that you do not have an abiding conviction that a defendant is guilty of a charge.

Now, you have heard me use the words knowledge and intent as an element of a crime. An act or failure to act you have heard me say is done knowingly if done voluntarily and intentionally and not because of mistake or other innocent reason.

Knowledge and intent exist in the mind. We all know that you can't open up a person's head to find out what he thinks or what he knows or what is going on in there. The only way that you have at arriving at a decision on the question of knowledge and intent is for you to take into consideration all the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary and almost always unavailable. Knowledge and intent may be inferred from all the surrounding circumstance

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2 Now, I did charge you about evidence of a
3 prior similar act at the time that it came up. Let me
4 tell you about it again.

5 Evidence that an act was done at one time or
6 that a defendant engaged in a similar transaction on one
7 occasion is not any evidence or proof whatever that a
8 similar act or transaction took place at another time or
9 on another occasion. Naturally I am referring to the evi-
10 dence of the conviction of Mr. Duke, I believe it was in
11 September of this year, with respect to a similar charge.

12 Now, the evidence that a defendant may have
13 done an earlier act or engaged in an earlier transaction
14 of a like nature may not be considered by you in determining
15 whether a defendant committed any act charged in the indict-
16 ment, nor may any evidence of an alleged earlier act of
17 a like nature be considered for any other purpose unless
18 the jury first finds that the evidence in the case standing
19 alone establishes beyond a reasonable doubt that the accused
20 did the particular act charged in the particular count of
21 the indictment then under consideration.

22 If you should find beyond a reasonable doubt
23 from other evidence in the case that the defendant did the
24 act charged in the count that you are considering then you
25 may consider evidence as to an alleged earlier act or

2 transaction of a similar nature in determining the state
3 of mind or intent with which the accused did the act
4 charged in the particular count that you are considering.
5 And where proof of an alleged earlier act or transaction
6 of a like nature is established by evidence which is
7 clear and conclusive you may, but are not obliged to, draw
8 the inference and find that in doing the act charged in the
9 particular count that you are considering here that the
10 defendant acted wilfully and with specific intent and
11 not because of mistake or accident or other innocent reason.

12 I told you that your principal function during
13 the course of the taking of this testimony would be to
14 assess the credibility of the witnesses who testified
15 and you are to judge that solely under the conditions that
16 I give you here and not on any extraneous issues that
17 have nothing to do with this case.

18 You as jurors are the sole judges of the
19 credibility of the witnesses. You and you alone must
20 determine what weight their testimony deserves. In my
21 instructions at the start of the case I gave you some guide-
22 lines that I thought might be helpful to you as you listened
23 to the testimony. I am going to repeat and expand on
24 those instructions at this point.

25 Preliminarily, you are to understand that you

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should not be influenced by the mere number of witnesses called by either side. The weight of the evidence is not necessarily determined by -- is not determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine where the truth lies.

In assessing credibility you should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. The degree of credit to be given a witness should be determined by his demeanor, his relationship to the controversy and the parties, his bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection viewed in the light of all other testimony and the attendant circumstances in the case and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

How did the witness impress you? Did his version appear straightforward and candid? Or did he try to hide some of the facts? Is there a motive to testify falsely?

In passing upon the credibility of a witness you take into account inconsistencies or contradictions as to

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2 material matters in his own testimony or any conflict
3 with that of another witness, also any inconsistencies
4 or omissions in prior testimony or any prior statement of
5 material matters as to which he may have testified upon
6 the trial.

7 Inconsistencies or discrepancies in the testi-
8 mony of a witness or between the testimony of different
9 witnesses may or may not cause the jury to discredit such
10 testimony. Two or more persons witnessing an incident
11 or a transaction may see or hear it differently an innocent
12 ~~misrecollection~~, like failure of recollection, is not an
13 uncommon experience. A witness may be inaccurate, contra-
14 dictory or untruthful in some respects and yet be entirely
15 credible in the essentials of his testimony. In weighing
16 the effect of a discrepancy consider whether it pertains
17 to a matter of importance or an unimportant detail and
18 whether the discrepancy results from innocent error or
19 wilful falsehood.

20 If you find that any witness has testified
21 falsely you can do one of two things. You can either reject
22 all of that witness' testimony on the grounds that it was
23 all tainted by falsehood and that none of it is worthy
24 of belief or you can accept that part which you believe to
25 be credible and reject only that part which you believe to

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2 be tainted by falsehood.

3 Now, should you find that all or part of a
4 particular witness' testimony was false you may not, of
5 course, infer that the opposite of that testimony is the
6 truth, unless there is other evidence to that effect. Any
7 testimony rejected by you as false is no longer in the case
8 insofar as any finding that you may make is concerned. You
9 will recall that I told you that an inference was a con-
10 clusion which reason or common sense leads you to draw from
11 the facts which you find have been proved. Thus a finding
12 of the fact may not be established merely by a negative
13 inference arising from your disbelief and rejection of
14 any testimony.

15 In passing upon credibility the ultimate ques-
16 tion is did the witness tell you the truth here before
17 you. It is for you to say whether his testimony at this
18 trial is truthful in whole or in part in the light of his
19 demeanor, his explanations and all the evidence in the
20 case.

21 In assessing the credibility of a witness you
22 may take into consideration the fact that the witness has
23 in the past been convicted of certain crimes in determining
24 that witness' credibility. While prior conviction may be
25 a factor affecting credibility, it by no means follows

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2 that the witness is for that reason necessarily untruthful.
3 Prior convictions are just one of a number of factors which
4 may be considered when you determine his credibility.
5 The ultimate question is did the witness testify truthfully
6 before you.

7 Now, in connection with the question of cred-
8 ibility I wish to bring to your attention one of the rules
9 of this court which relates to the testimony of an
10 accomplice. An accomplice is one who unites with another
11 person in the commission of a crime voluntarily and with
12 common intent.

13 In the prosecution of crime the Government
14 is frequently called upon to use witnesses who are accom-
15 plices. Sometimes it has no choice. The Government must
16 rely upon witnesses to transactions such as they are.

17 Under Federal law there is no requirement that
18 the testimony of an accomplice be corroborated. A convic-
19 tion may rest upon the uncorroborated testimony of an
20 accomplice if you believe it and find it credible.

21 However, the testimony of an accomplice should
22 be viewed with great caution and scrutinized carefully.
23 In assessing the credibility of an accomplice, as with that
24 of any witness, you may consider any interest in the outcome
25 of the case. You may consider evidence as to any

benefit the witness expects to derive or has derived from his testimony or evidence as to a motive to place responsibility on others.

If you find that the testimony of an alleged accomplice was deliberately untruthful you should unhesitatingly reject it. On the other hand, if upon a cautious and careful examination you are satisfied that such witnesses have here given a substantially truthful version of events to which they testified, such testimony should be given appropriate consideration together with all the other evidence in the case in determining the guilt or innocence of the defendants.

Again, the ultimate question is did the witness after taking into consideration all the factors that may affect his testimony, testify truthfully before you as to events to which he testified.

Now, when, as here, a defendant does testify -- defendant Donald Niang testified -- it is your function as jurors to assess his credibility in the same manner as you assess the credibility of any other witness. You will recall that I instructed you that one factor that you would consider in judging credibility was any interest a witness may have in the outcome of the trial. Obviously a defendant has a personal interest in the outcome of the trial. In

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2 appraising his credibility you may take the fact of interest
3 into consideration. However, it by no means follows
4 that simply because a person has a substantial interest
5 in the result he is not capable of telling a straightforward
6 or truthful story. It is for you to decide to what extent,
7 if at all, his interest has affected his testimony.

8 I told you earlier too that a defendant in
9 a criminal case had no requirement to present any testimony
10 or any evidence on his own behalf. A defendant is not re-
11 quired under our laws to prove his innocence. For these
12 reasons a defendant need not take the witness stand to testi-
13 fy in his own behalf. The fact that defendants Duke and
14 Williams did not testify at this trial does not create any
15 presumption for or against them and I charge you that that
16 fact that they did not take the stand must not weigh in the
17 slightest nor shall this fact enter into your discussions
18 or deliberations in any manner.

19 Now, if a potential witness could have been
20 called by the Government or by the defendants and neither
21 side called him then you may infer that the testimony of the
22 absent witness might have been unfavorable either to the
23 Government or to the defendant or to both of them. On
24 the other hand, it is equally within your province to draw
25 no inference at all from the failure of either side to call

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2 a witness.

3 Now, in your deliberations please do not
4 discuss the question of possible punishment. That is a
5 matter that rests on my conscience and my conscience alone,
6 because the Judge and the Jury alone is the one who has
7 the obligation of imposing sentence when and if guilt is
8 determined. If you discuss it among yourselves or in
9 any way let it affect your deliberations then you are en-
10 croaching upon my function and I ask you not to do it.

11 Your function is to consider the facts and to
12 determine the facts and my function is to pass upon the
13 law and in the event of conviction to impose sentence.

14 If you find on all the evidence that the evidence
15 respecting a defendant leaves a reasonable doubt as to his
16 guilt you should not hesitate for a moment to return a
17 verdict of acquittal as to that defendant. However, on
18 the other hand, if you find beyond a reasonable doubt that the
19 law has been violated as charged you should not hesitate
20 because of sympathy or because of any other reason to
21 return a verdict of guilty.

22 The verdict must represent the considered
23 judgment of each juror. In order to return a verdict it
24 is necessary that it be unanimous. It is your duty as
25 jurors to consult with one another and to deliberate with

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2 a view to reaching an agreement if you can do so without.
3 violence to individual judgment. Each of you must decide
4 the case for yourself, but do so only after an impartial
5 consideration of the evidence with your fellow jurors.

6 In the course of your deliberations do not
7 hesitate to reexamine your own views and change your
8 opinion if convinced that it is erroneous. But do not
9 surrender your honest conviction as to the weight or effect
10 of evidence solely because of the opinion of your fellow
11 jurors or for the mere purpose of returning a verdict.

12 You are not partisans. You are judges, judges
13 of the facts. Your sole interest is to ascertain the
14 truth from the evidence in the case.

15 Now, if it becomes necessary during your
16 deliberations to communicate with the Court you may send
17 a note by the marshal signed by your foreman or one or more
18 members of the jury. No member of the jury should ever
19 attempt to communicate with the Court by any means other
20 than a signed writing, and the Court will never communicate
21 with any member of the jury on any subject touching the
22 merits of the case otherwise than in writing or orally here
23 in open court.

24 You will note in the oath about to be taken by
25 the marshal that he too as well as any other persons are

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2 forbidden to communicate in any way or manner with any .
3 member of the jury on any subject touching the merits of
4 the case.

5 Bear in mind also that you are never to
6 reveal to anyone, not even to the Court, how you stand
7 numerically or otherwise on the question of the guilt or
8 innocence of a defendant unless and until after you have
9 reached a unanimous verdict.

10 Of course, I might add that nothing said in the
11 instructions is to suggest or convey in any way or manner
12 any intimation as to what verdict I think you should find.
13 What the verdict shall be is your sole and exclusive
14 duty and responsibility.

15 It is a custom that is sometimes mostly followed
16 but sometimes not followed, that the person occupying the
17 first seat is the -- this word I can't get down -- is the
18 foreperson of the jury. That is not necessary, absolute.
19 You may elect your own foreperson and conduct your
20 deliberations as you choose, subject, of course, to certain
21 matters that I have with respect to time and so forth. But
22 you have the right to elect your own foreperson and conduct
23 your deliberations as you elect.

24 Now, counsel have the opportunity to take any
25 exceptions with respect to my charge if they feel that I

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2 have improperly charged you with respect to the law, or in
3 case I have omitted some instructions, they have a right
4 to request that I charge you additionally. I will take
5 those at the side bar here. If we find it is going to be
6 lengthy, why, I will let you go out. If it's going to be
7 just a short thing, why, you can just remain there.

8 (At the side bar.)

9 THE COURT: Mr. Gallt, any exceptions?

10 MR. GALLT: On the value of securities, frankly
11 the trial has been at such a fast pace I haven't had a chance
12 to research properly whether a non-negotiable security
13 is of the value of one which has an assignment to Parco and
14 therefore not assigned has a value to anyone of the amount
15 which you have led the jury to believe, 125,000 on that
16 Potomac Power. I would object to the charge until such
17 time as I properly research it.

18 THE COURT: All right. Do you have any requests
19 to charge?

20 MR. GALLT: No.

21 THE COURT: Mr. Zalowitz?

22 MR. ZALOWITZ: No, sir.

23 THE COURT: Any exceptions, any requests?

24 MR. ZALOWITZ: No, sir.

25 MR. SALWAY: No exceptions, no requests.

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2 MR. GOLDSTEIN: Your Honor, the Government's
3 sole request is that the Court include a charge about
4 variance on dates.

5 THE COURT: I did that.

6 MR. GOLDSTEIN: I thought the question with
7 respect to conspiracies was covered by the Court, but with
8 respect to any overt acts or particular action, that the
9 Government need only prove that it happened on or about that
10 date.

11 THE COURT: All right. One other thing, gentle-
12 men. What I would like to do -- I haven't prepared it; I am
13 going to prepare it -- is a form of verdict which will read
14 as to defendant Duke, on Count 1 we find him blank, Count 2,
15 so forth. I will have it typed up. I didn't have it
16 typed up. I should have.

17 Any objection to that?

18 MR. GALLT: No objection.

19 MR. GOLDSTEIN: No objection.

20 MR. SALAWAY: No objection.

21 MR. ZALOWITZ: No objection.

22 THE COURT: It makes it easier for them.

23 (In open court.)

24 THE COURT: I am not certain whether or not
25 I charged you with respect to the dates of the overt acts.

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2 I believe that I should charge you that with respect to
3 overt acts you may take the date and it may be on or about
4 or near or approximately in time. It doesn't have to be
5 the specific date, but on or about or within a reasonable
6 time therein.

7 The only additional thing I want to tell you
8 is that you will have the indictment to take with you to
9 the jury room and if you want any exhibits, why, send
10 a request signed by your foreperson, and if there is any
11 testimony or any part of the charge during the course of your
12 deliberations that you wish to have reread, why, if you
13 can specify it as precisely as you can, so that we can
14 find exactly what you want, why, it would be a helpful
15 specify if you require anything.

16 I do not have ready for you yet, but it will
17 be sent in to you, what is called a form of verdict. You
18 are not to assume by reason of its setting out that
19 you should decide one way or another. As a matter of fact,
20 it's going to be pretty bland. But it may be helpful to
21 you in announcing your verdict when you have arrived at
22 your verdict. It will read as follows: As to the defend-
23 ant Duke, on Count 1 we find him -- and we will leave a
24 blank -- whatever it is, as to defendant Duke on
25 Counts 1 through 5, the same as to the other two defendants.

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2 it will help you in announcing your verdict when you return
3 here to fill in and read it that way, because you will
4 be asked to announce your verdict as to each defendant on
5 each count when you return, and that will be a help. That
6 will be available for you shortly.

7 As you can see, when we went through this trial
8 we did lose one juror from incapacity. Again, my apologies
9 to Juror Number 10 about yesterday, but we didn't know. If
10 we hadn't had everything here and ended up with eleven
11 jurors we would have had to start this trial all over again.
12 It was necessary for you to be here. I appreciate the
13 attention that you have given to it, your cooperation with
14 the Court. You have all been extremely cooperative in
15 arriving here on time and paying attention to what was going
16 on.

17 You can't go into the jury room with the other
18 jurors. Do you have something back there now?

19 ALTERNATE JUROR 1: Yes, I do.

20 THE COURT: You can't go in with the other
21 jurors. Before the jury goes out the marshal will take you
22 in and you can get what you have in there.

23 They should have the menus ready for you pretty
24 soon so you can order your lunch. They usually come up
25 between 11:00 and 11:30. Lunch will probably be brought